

House File 291 - Introduced

HOUSE FILE 291
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO HSB 21)

(COMPANION TO SF 173 BY
COMMITTEE ON JUDICIARY)

A BILL FOR

- 1 An Act relating to trusts, including requirements for
- 2 certifications of trust and the general order of abatement.
- 3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 633A.4604, subsection 2, Code 2021, is
2 amended by adding the following new paragraphs:

3 NEW PARAGRAPH. *0a.* State the names of all the currently
4 acting trustees.

5 NEW PARAGRAPH. *00a.* If there is more than one currently
6 acting trustee, state whether the trustees may act individually
7 or must act by majority decision or must act by unanimous
8 decision.

9 Sec. 2. Section 633A.4604, subsection 2, paragraph c, Code
10 2021, is amended to read as follows:

11 *c.* Be dated and certified under penalty of perjury
12 and pursuant to the laws of the state of Iowa that the
13 certification of trust is true and correct or be subscribed and
14 sworn to under penalty of perjury before a notary public as
15 provided in [chapter 9B](#).

16 Sec. 3. Section 633A.4703, subsection 4, Code 2021, is
17 amended to read as follows:

18 4. Notwithstanding [subsections 1, 2, or 3](#), a disposition in
19 favor of the settlor's surviving spouse who does not take an
20 elective share shall ~~not be abated where such abatement would~~
21 ~~have the effect of increasing the amount of federal estate or~~
22 ~~federal gift taxes payable by a person or an entity~~ last.

23 EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill relates to trusts, including requirements for a
27 certification of trust and abatement of a disposition in favor
28 of a surviving spouse who did not take an elective share.

29 Current law prescribes certain requirements to be included
30 in certifications of trusts. Under the bill, certifications
31 of trust must also state the names of all currently acting
32 trustees and, if there is more than one trustee, whether the
33 trustees may act individually, or must act as a majority or
34 unanimously. Under current law, a certification of trust must
35 be subscribed and sworn to under penalty of perjury before

1 a notary public. The bill provides that, in lieu of this
2 procedure, a certification of trust may be dated and certified
3 under penalty of perjury.

4 Under current law, abatement occurs when the equitable
5 assets of a deceased person are not sufficient to satisfy
6 debts, creditors, or taxes. Code section 633A.4703 provides
7 a default order of abatement if the governing instrument is
8 silent. Currently, shares allocated to residuary beneficiaries
9 are abated first on a pro rata basis, followed by shares
10 defined by dollar amount on a pro rata basis, and lastly the
11 shares described as specific items of property are abated
12 by the trustee among the beneficiaries as equitably as
13 circumstances reasonably allow. A disposition in favor of
14 a surviving spouse who has not taken an elective share is
15 not abated when the abatement would result in increasing the
16 amount of federal taxes payable by a person or entity. The
17 bill provides that a disposition in favor of the surviving
18 spouse who did not take an elective share is abated last,
19 notwithstanding the current order of abatement which remains
20 the same, and strikes the prohibition on such abatements which
21 have the effect of increasing the amount of federal taxes
22 payable by a person or entity.